

Honorable Karen A. Overstreet  
Chapter 11  
Hearing Location: Seattle, Room 7206  
Hearing Date: November 9, 2012  
Hearing Time: 9:30 a.m.  
Reply Date: November 2, 2012

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

In Re:

CONSOLIDATED MERIDIAN  
FUNDS, a/k/a MERIDIAN  
INVESTORS TRUST, et al.

Debtors.

Consolidated Case No. 10-17952

**SUPPLEMENTAL  
DECLARATION OF  
MICHAEL J. AVENATTI IN  
FURTHER SUPPORT OF  
TRUSTEE MARK  
CALVERT'S NOTICE OF  
MOTION AND MOTION TO  
COMPEL COMPLIANCE  
WITH FEDERAL RULE OF  
BANKRUPTCY PROCEDURE  
2004 SUBPOENA TO MOSS  
ADAMS, LLP AND FOR AN  
ORDER TO SHOW CAUSE  
WHY MOSS ADAMS, LLP  
SHOULD NOT BE HELD IN  
CONTEMPT**

**SUPPLEMENTAL DECLARATION OF MICHAEL  
J. AVENATTI (NO. 10-17952) - 1**

OSBORN MACHLER  
2125 Fifth Avenue  
Seattle, WA 98121  
206-441-4110

1 I, Michael J. Avenatti, declare and state as follows:

2 1. I am an attorney with the law firm of Eagan Avenatti, LLP (“Eagan  
3 Avenatti”). I am a member in good standing of the California bar and admitted to practice  
4 law in this bankruptcy proceeding *pro hac vice*. I represent the Trustee. I have personal  
5 knowledge of the facts set forth below and if called as a witness could and would testify  
6 competently thereto.

7 2. For two years, Moss Adams and its counsel have been representing that all  
8 documents responsive to the subpoena have been produced. These representations have been  
9 made on numerous occasions, including in January, February, April, May, October, and  
10 November 2012, and in writing on April 3 and 11 and October 15, 2012. Attached hereto as  
11 Exhibits M and N are true and correct copies of emails from Moss Adams’ counsel dated  
12 April 3 and 11, 2012. An October 15, 2012 letter from Moss Adams’ counsel is attached as  
13 Exhibit I to the declaration I previously submitted in support of this Motion.

14 3. Attached hereto as Exhibit O are four emails produced by Moss Adams on  
15 October 15, 2012. The emails were forwarded to Moss Adams’ General Counsel, Scott  
16 Kallander, on March 28, 2011, well over a year before they were ever produced.

17 4. Attached hereto as Exhibit P is a true and correct copy of a November 2, 2012  
18 email I sent to Moss Adams Counsel Mr. Fogg in continued meet and confer efforts relating  
19 to this motion. In this email, I asked him: “where are the documents used in relied upon in  
20 preparing the audits?” I also indicated that such documents would be responsive to Request  
21 No. 1.

22 5. Attached hereto as Exhibit Q is a true and correct copy of October 15, 2012  
23 email I sent to Mr. Fogg to ask about the absence of emails from Moss Adams’ productions.  
24 I also asked about emails in telephonic conversations with Moss Adams’ Counsel. He never  
25 indicated that emails had been destroyed pursuant to any document retention policies.  
26

**SUPPLEMENTAL DECLARATION OF MICHAEL  
J. AVENATTI (NO. 10-17952) - 2**

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6. Attached hereto as Exhibit R is a true and correct copy of Moss Adams' Engagement Letter for tax services for Meridian Partnership Management, Inc. ("MPM"). An attachment to the letter contains the following provision: "Our firm policy is to destroy our annual tax return engagement files and all pertinent work papers after a retention period of seven years (or longer, if required by law or regulation), after which time these items will no longer be available."

7. I have continued to meet and confer with Moss Adams even after Trustee's Motion to compel was filed, including during a telephone conversation on November 2, 2012 and in emails before and after that conversation. Exhibit S is a true and correct copy of an additional email exchanged with Moss Adams' Counsel.

I declare under penalty of perjury under the laws of the United States of America and the State of Washington that the foregoing is true and correct.

EXECUTED this 6<sup>th</sup> day of November, 2012, at Newport Beach, California

/s/ Michael J. Avenatti

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Michael J. Avenatti

<b>SUPPLEMENTAL DECLARATION OF MICHAEL J. AVENATTI (NO. 10-17952) - 3</b>	OSBORN MACHLER 2125 Fifth Avenue Seattle, WA 98121 206-441-4110
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury as follows:

1. I am employed at Osborn Machler.

2. On November 6, 2012, I caused a true and correct copy of the foregoing document to be served by email on the following parties:

Kelly P. Corr  
Steven W. Fogg  
Corr Cronin Michelson Baumgardner & Preece  
1001 Fourth Avenue, Suite 3900  
Seattle, WA 98154-1051  
[kcorr@corrchronin.com](mailto:kcorr@corrchronin.com)  
[sfogg@corrchronin.com](mailto:sfogg@corrchronin.com)  
Attorneys for Defendant Moss Adams LLP

3. On November 6, 2012, I caused a true and correct copy of the foregoing document to be served by mail on the following parties:

Frederick Darren Berg  
Inmate No. 17950-086  
Lompoc Federal Correctional Institution  
3600 Guard Road  
Lompoc, CA 93436  
Pro Se Defendant

DATED this 6<sup>th</sup> day of November, 2012.

/s/ Kathryn R. Bue  
Kathryn R. Bue

<b>SUPPLEMENTAL DECLARATION OF MICHAEL J. AVENATTI (No. 10-17952) - 4</b>	<b>OSBORN MACHLER</b> 2125 Fifth Avenue Seattle, WA 98121 206-441-4110
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